

Paycheck Protection Program Loans: Basics for Small Businesses, Sole Proprietorships

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The Paycheck Protection Program (PPP), a federal loan program administered by the Small Business Administration (SBA), aims to provide funding to small businesses substantially affected by the COVID-19 public health crisis so they can maintain payroll and cover critical business expenses. Small businesses and sole proprietorships can apply for these loans through any existing SBA lender starting on April 3, 2020.

Congress authorized up to \$349 billion for PPP loans as part of the [CARES Act](#), which was enacted March 27, 2020. Future requests for additional appropriations of \$250 billion are anticipated.

Eligibility

In addition to small business concerns eligible for SBA loans under existing law, the CARES Act expands eligibility for PPP loans to include business concerns with *500 or fewer employees*, certain nonprofits, veterans' organizations, Tribal business concerns, sole proprietorships, self-employed individuals, and independent contractors. (Although not in the statute, subsequent guidance from the Treasury Department provides that "a business is eligible for a PPP loan if the business has 500 or fewer employees *whose principal place of residence is in the United States*, or the business meets the SBA employee-based size standards for the industry in which it operates (if applicable).")

Businesses in certain industries that have more than 500 employees may still qualify for a PPP loan if they meet applicable SBA employee-based size standards for those industries.

Additionally, a special eligibility rule provides that employers assigned a North American Industry Classification System code beginning with 72 (accommodations and food services) with not more than 500 employees per physical location of the business concern are eligible to receive a PPP loan.

For purposes of the 500-employee threshold, all employees must be counted, whether full-time, part-time, or employed on some other basis (including employees obtained from a temporary employee agency, professional employer organization, or leasing concern). In general, employees of affiliates also are counted toward the 500-employee threshold under SBA [affiliation rules](#) (13 CFR § 121.301). The SBA has indicated that it is the borrower's responsibility to determine which entities (if any) are its affiliates for purposes of its employee count and lenders are permitted to rely on an applicant's certifications. Thus, employers will need to review carefully their structure to determine if they are indeed eligible for the loans. The affiliation rules are waived for small businesses:

1. In the hotel and food services industries that is assigned a North American

- Industry Classification System code beginning with 72; *or*
2. That are franchises in the SBA's Franchise Directory; *or*
 3. That receive financial assistance from small business investment companies licensed by the SBA.

Loan Amount

Generally, an applicant may borrow up to 2.5 times its aggregate payroll costs using data either from the previous 12 months or from calendar year 2019, not to exceed \$10 million dollars.

The following are *included* in calculating average monthly *payroll costs*:

- Salary, wage, commission, or similar compensation (for a sole proprietor or independent contractor, this includes wages, commissions, income, or net earnings from self-employment, capped at \$100,000 on an annualized basis);
- Payment for vacation, parental, family, medical, or sick leave;
- Allowance for dismissal or separation;
- Payment required for the provisions of group health care benefits, including insurance premiums;
- Payment of any retirement benefit (Treasury guidance confirms that this includes "employer contributions to defined-benefit or defined-contribution retirement plans."); and
- Payment of state or local tax assessed on the compensation of the employee.

The following are *excluded* in calculating average monthly payroll costs:

- Salary, wage, commission, or similar compensation in excess of \$100,000 per employee annually, prorated as needed (Treasury guidance confirms that the \$100,000 annual cap applies only to cash compensation and not to non-cash benefits);
- Payroll taxes, railroad retirement taxes, and income taxes imposed on the employer;
- Any compensation of an employee whose principal place of residence is outside the United States;
- Qualified sick leave wages for which a credit is allowed under § 7001 of the Families First Coronavirus Response Act (FFCRA); and
- Qualified family leave wages for which a credit is allowed under §7003 of the FFCRA.

Permissible Uses of Loan Funds

PPP loan funds may be used for:

- Payroll costs, including benefits;
- Interest on mortgage obligations incurred before February 15, 2020;
- Rent, under lease agreements in force before February 15, 2020; and
- Utilities, for which service began before February 15, 2020.

Loan Forgiveness

A PPP loan will be forgiven in an amount equal to what the borrower spent on the permissible uses described above during the eight-week period starting from the date of the first disbursement of loan proceeds. However, subsequent guidance provides

that the “finite appropriations and the structure of the [CARES] Act warrant a requirement that borrowers use a substantial portion of the loan proceeds for payroll costs,” and, therefore, that no more than 25% of the forgiven amount may be for non-payroll costs.

The loan amount forgiven also may decrease if the borrower decreases employee headcount or decreases salaries and wages by more than 25% (but only with respect to employees who made less than \$100,000 annualized in 2019). Borrowers have until June 30, 2020, to restore full-time employment and salary levels for any changes made between February 15, 2020, and April 26, 2020, to avoid a reduction on this basis.

A PPP borrower will be required to submit a separate application to the lender certifying and documenting entitlement to the forgiveness sought. Required documentation will include:

- Documentation verifying the number of full-time equivalent employees on payroll and pay rates for the relevant periods;
- Payroll tax filings reported to the Internal Revenue Service and state income, payroll, and unemployment insurance filings; and
- Documentation (including cancelled checks, payment receipts, transcripts of accounts, or other documents) verifying payments on covered mortgage obligations, payments on covered lease obligations, and covered utility payments.

The lender must make a determination regarding an application for loan forgiveness within 60 days of the request. The SBA is required to issue guidance on the forgiveness provisions within 30 days of the enactment of the CARES Act, or no later than April 26, 2020.

For additional guidance, please contact a Jackson Lewis attorney.

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